MANAGING UNDERUTILIZED REAL PROPERTY, INCLUDING DISPOSAL

- **1. REASON FOR ISSUE**. This handbook describes methods and requirements for managing underutilized real property in VA's asset portfolio.
- **2. SUMMARY OF CONTENTS**. This handbook provides background, policy, procedures, responsibilities and reporting requirements for the execution of actions that will improve management of VA's real property and maximize existing resources.
- 3. RESPONSIBLE OFFICE. The Office of Asset Enterprise Management (004B).
- **4. RELATED DIRECTIVE**. VA Directive 7633, Managing Underutilized Real Property, Including Disposal.
- 5. RESCISSIONS. None.

CERTIFIED BY:

BY DIRECTION OF THE SECRETARY OF VETERANS AFFAIRS:

/s/

Robert N. McFarland Assistant Secretary For Information and Technology /s/

Robert J. Henke Assistant Secretary for Management

Distribution: Electronic Only

MANAGING UNDERUTILIZED REAL PROPERTY, INCLUDING DISPOSAL

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MANAGING UNDERUTILIZED REAL PROPERTY, INCLUDING DISPOSAL

1. PURPOSE. This handbook describes methods and appropriate steps for managing underutilized real property in VA's asset portfolio. This handbook sets out policy regarding management options including disposal, steps for implementation, and requirements for an annual disposal plan required by Congress.

2. DEFINITIONS

- a. Capital Asset Fund (CAF) A revolving fund established by Public Law 108-422 in the Treasury of the United States for the Department of Veterans Affairs. Any proceeds from transfers are to be deposited into this fund. Amounts in the CAF shall remain available until expended. Any disbursements from CAF must come from an initial appropriation or re-appropriation by Congress of unobligated CAF funds each fiscal year. The funds may be used for the following purposes under 38 U.S.C. § 8118(b):
- (1) Costs associated with transfers of real property including demolition, environmental remediation, maintenance and repair, improvements to facilitate the transfer, and administrative expenses.
 - (2) Costs (as listed above) associated with future transfers.
- (3) Costs associated with enhancing medical care services through construction projects less than \$7 million (minor medical facility project).
- (4) Costs associated with the transfer, lease, or adaptive use of a structure or other property listed on the National Register of Historic Places.
- b. Deconstruction The process by which buildings are dismantled through the reuse or recycling of the building hardware. Examples of this include reusing interior doors from an abandoned building or removing good quality door hinges for use elsewhere. The remainder of the building is then left intact for mothballing or demolition.
- c. Disposing of Real Property The activity of identifying and disposing of property no longer needed by VA, which is outlined in this handbook.
- d. Enhanced-Use Leasing (EUL) A process that provides innovative opportunities for VA to partner with the public or private sector to maximize returns from underused capital assets. Per 38 U.S.C. 8162, enhanced-use lease properties are not considered to be underutilized and are exempt from McKinney-Vento Act screening. Currently, VA can outlease property to other parties for up to 75 years for "fair consideration." The consideration can be in the form of cash, services, space, or other in-kind consideration. VA may not enter an EUL as a means to dispose of real property.
- e. Historic Building A building listed or eligible to be listed on the National Register of Historic Places by state or federal historic preservation offices.

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f. Interest in Real Property – Real property owned by the United States and administered by the Secretary with an estimated value of at least \$50,000.

- g. Mothballed Building Abandoning a building but maintaining a minimal level of heating and cooling. This also includes blocking entryways, avoiding vandalism and ensuring building integrity.
- h. Outlease The leasing of VA-owned real property to public or private interests outside of VA. In such a case, VA is the lessor. The maximum term (except in the case of an enhanced-use lease) is 3 years for VHA and VBA (38 U.S.C. § 8122) and 10 years for NCA (38 U.S.C. § 2412).
 - i. Permit A license granted to another federal agency.
- j. Revocable License Permission to enter upon and do a specific act or series of acts upon the land of the licensor without possession or acquiring any estate therein. It legalizes an act, which in the absence of the license would constitute a trespass. A license is personal and non-assignable (unless by agreement), and is revocable at any time.
- k. Sharing of Space This process allows VHA space to be offered to a sharing partner for the benefit of veterans or non-veterans. Guidance for this program may be found in VHA Handbook 1820.1.
- I. Underutilized An entire property or portion thereof, with or without improvements, used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property. By law, property under an enhanced-use lease is <u>not</u> considered underutilized for purposes of the McKinney-Vento Act.
- **3. PROCEDURES.** There are several options available for decreasing the underutilized capacity of VA real property, as outlined below, each with its own set of steps and requirements. The options should be considered in the order prescribed. However, if an option is not found to be feasible (for example, lack of private interest in enhanced-use leasing VA property), a lower priority option may be used. It is important to note that the transfer options involving the Capital Asset Fund and the General Services Administration (GSA) disposal require VA to obtain not less than fair market value for any real property disposition. Proceeds from the disposition shall be deposited into the appropriate Congressionally approved account according to funding principles.
- a. Offering Underutilized Property to Other VA Entities and Federal Agencies In all cases properties should first be offered to other VA entities (as outlined in b. through d. below) prior to other federal agencies. Only when it has been determined that no other VA entity has interest in the property should VA proceed with offering the asset to other federal agencies. Public laws mandate that property be offered to federal agencies prior to being offered to the private sector. Offering underutilized property to VA entities provides benefits for both entities through collocation. The only requirement to transfer real property within VA is that the landholding office must issue a "Notice of Intent to Declare

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Excess" in the format provided (Appendix A) for internal electronic distribution to the facilities management office of the receiving administration. The landholding office may also distribute the Notice to any staff offices that might have an interest in the property. Recipients of the Notice will have 30 calendar days to respond to the originating office in writing (Appendix B). The Under Secretary, Assistant Secretary, or other key official of both VA entities must concur on the new use, and the transfer must be approved by the Deputy Secretary. For VHA, this has been delegated through the Under Secretary for Health to the Chief Facilities Management Officer.

- **b. Enhanced-Use Leases (EULs)** VA may lease land and/or buildings to the public or private sector for up to 75 years for non-VA use, which, however, may include space for a VA activity, or for cash consideration to improve health care services to eligible veterans in the community served. The Department must receive fair consideration as determined by an appraiser or what a buyer is willing to pay, approved by the Secretary, which may be in the form of revenue, facilities, space, or in-kind services to improve health care services. The requirements associated with EULs are found in VA Handbook 7415.1, Enhanced-Use Leasing. The Secretary approves all EULs unless he redelegates this authority. [This authority now rests with the Assistant Secretary for Management (004).]
- c. Sharing, Licenses, Outleases, Permits, and Easements Stations may be able to license, outlease, permit, or enter into easement agreements for VA or non-VA use of underutilized space if partners can be identified. Federal agencies may also enter into agreements with VA. Outleases have a maximum term of 3 years per 38 U.S.C. § 8122. The requirements associated with these initiatives are found in the following documents: Sharing Handbooks 1820.1 and 1660.1; Licenses, Permits and Easements MP-3, Part II; and VHA Directive 2005-004, Delegation of Outleases, Revocable Licenses & Permits.
- d. Capital Asset Fund, Disposal Using Enhanced-Use Lease Authority, Transfer Authority, State Extended Care, GSA Disposal The Secretary may elect to transfer real property to a non-VA entity through one of four distinct authorities described below. For an overview of the disposal process, consult Appendix C.
- (1) Disposal Using Enhanced-Use Lease Authority The Secretary is granted authority to transfer real property to a lessee (under 38 U.S.C. § 8164) at any time during the term of the enhanced-use lease or within 30 days thereafter, provided that the Secretary determines that disposal under section 8164 is in the best interest of the Department. Disposition of enhanced-use lease property is not subject to the requirements of the McKinney-Vento Act, GSA, or CAF (unless the Secretary determines that disposition of such property under 38 U.S.C. § 8118 or 8122, rather than under 8164, is in the Department's best interest).
- (2) Transfer Authority, Capital Asset Fund The Secretary is granted authority to transfer real property (under 38 U.S.C. § 8118, 8122) to another department or federal agency, a State, any public or private entity, or an Indian tribe, but the transfer is still subject to the McKinney-Vento Act. See Appendices C and D for a description of the required steps and terminology. The Secretary may also enter into partnerships or agreements with public or private entities dedicated to historic preservation to facilitate transfer of properties listed on the National Register of Historic Places. Fair market

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consideration is required in exchange for VA property. However, the property must first be submitted to the Department of Housing and Urban Development (HUD) for McKinney-Vento screening, which gives priority to use by a homeless provider. If real property is transferred to a homeless provider or other public benefit use¹, the Secretary may discount the property up to 100% of fair market value. For transfers resulting from the McKinney-Vento process, the terms of conveyance must specify that the property may not be used for any purpose other than the provision of services for homeless veterans.

- (3) State Extended Care The Secretary may transfer any interest in real property determined to be excess to the needs of the Department to a State for use as a nursing home or domiciliary. The requirements for State Extended Care transfers are found under 38 U.S.C. § Section 8122(a)(3). The State must provide assurance that it has the resources to construct and operate such a facility. If the property is used at any time for any other purpose, all rights, title, and interest shall revert to the Department. Under State Extended Care authority there are usually no proceeds; the property is granted to the State at 100% discount.
- (4) **GSA Disposal** The Secretary may declare real property excess by notifying GSA and filing the appropriate forms, including the Federal Property Information Checklist (defined in Appendix D), if the Secretary determines the property is no longer needed by the Department in carrying out its functions and is not suitable for the provision of services to homeless veterans. The requirements (specific to VA) for the transfer to GSA are found under 38 U.S.C. § Section 8122 (permanent authority to procure and dispose of property and to negotiate for common services). An important requirement is that VA must obtain fair market value for any property disposal. Proceeds from GSA disposal are deposited into the United States Treasury².
- e. Like-Kind Exchange of Property The Secretary may acquire any facility or parcel of land he considers necessary for use as a medical facility (38 U.S.C. § Section 8103) or national cemetery (38 U.S.C. § 2405) by exchanging a non-mission dependent or underutilized property under authority in title 38 U.S.C.
- **f.** Other options that may be considered include deconstruction, mothballing or demolition. Additional requirements can be found at the Administration level.
- **4. RELATED REQUIREMENTS.** Prior to transferring or disposing of real property, the transfer must be in compliance with the National Environmental Policy Act (NEPA), Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)³, and National Historical Preservation Act.
- a. The Environmental Assessment Summary form and additional NEPA compliance information can be found at the Web site: http://vaww.va.gov/facmgt/standard/env_idx.asp

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GSA Office of Property Disposal http://rc.gsa.gov/ResourceCenter/nonPRmain.asp

² Per 40 U.S.C. Subtitle I, Chapter 5, Subchapter IV, Section 571

³ CERCLA http://www.access.gpo.gov/uscode/title42/chapter103 .html

b. To permanently change the function, the appearance, or ownership of real property, supporting documentation will need to contain evidence of compliance with the National Historic Preservation Act found at: http://vaww.va.gov/facmgt/historic/Requirements.asp

5. REPORTING REQUIREMENTS

- a. Disposal Approvals and Application Form All disposals must be approved by the Secretary (or designee). They must also be entered into the Capital Asset Inventory (CAI) by the holding administration or staff office. All disposals with a fair market value up to \$7 million are approved at the Administration level and forwarded to the Secretary for approval through the Office of Management. All disposals with a fair market value of \$7 million or greater must be entered via a business case application (exhibit 300) in the Capital Asset Management System (CAMS) and reviewed by the CIP and SMC and approved by the Secretary. Except for disposals under the enhanced-use leasing authority (38 U.S.C. § 8164), approved applications will proceed with McKinney-Vento Act screening, as well as OMB and Congressional approvals.
- **b. Disposal Plan** A short-and long-term disposal plan will be developed for all assets regardless of threshold level. This plan will include all proposed disposals including those accomplished through EUL, CAF, GSA and state extended care, and like-kind exchange authorities. All disposals will be entered into the CAI and the Office of Management will develop both the short-and long-term disposal plans based upon the data entered by the administrations and staff offices. A disposal plan call memo will be issued annually by the Office of Management. The draft plan will be sent out to the Administrations and staff offices for concurrence before forwarding to Congress. Only those disposals that have been approved by VA and OMB will be included in the plan forwarded to Congress.
- **c.** Specific Disposal Actions for Budget Submissions As required by law, each Administration will also ensure that the following information is incorporated into its budget request. Only transfers under section 8118 (Capital Asset Fund) authority need be reported.
 - (1) A list of all real property transfers to be undertaken in the budget fiscal year.
- (2) A list of all real property transfers completed and scheduled to be completed during the current fiscal year.
- (3) A statement of all deposits into, and expenditures from, the Capital Asset Fund for the preceding fiscal year, the current fiscal year, and the budget fiscal year.

6. REFERENCES

- a. Code of Federal Regulations, title 24, volume 31, part 581.
- b. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. § 9601 et seq. http://www.access.gpo.gov/uscode/title42/chapter103_.html

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c. Code of Federal Regulations, title 41, subtitle C, parts 101 and 102, Federal Management Regulations System.

- d. Federal Property and Administrative Services Act (FPASA) of 1949, as amended.
- e. General Services Administration, Office of Property Disposal Resource Center. http://rc.gsa.gov/ResourceCenter/nonPRmain.asp
- f. Government Accountability Office Report GAO-03-326, Improved Planning for Management of Excess Real Property, January 2003.
 - g. House Report 108-663 (H.R. 4768).
 - h. National Historical Preservation Act of 1966 (P.L. 89-665), as amended.
 - i. National Environmental Policy Act of 1969 (P.L. 91-190), as amended.
 - j. Senate Report 108-353 (S.2485).
 - k. 38 U.S.C. § 8122, part VI, chapter 81, subchapter II, and subchapter V, sections 8162 and 8164.
 - I. 40 U.S.C. § 471 and 535
 - m. 42 U.S.C. § 11411
 - n. VA Directive 4085, Capital Asset Management.
 - o. VA Directive 4086, Investment Matrix.
 - p. VA Office of Asset Enterprise Management http://www.va.gov/oaem.
 - q. VA Regulations, 38 CFR, part 26.6(c), Environmental Effect of VA Actions.
 - r. Veterans Health Programs Improvement Act of 2004 (P.L. 108-422).

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SAMPLE:	Notice	of Intent	to Declare	Excess

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Originating Office:

The real property described below has been proposed for excess as it no longer serves the mission of the Administration or staff office. Other VA Administrations and staff offices with an interest in the property should notify the originating office within 30 days of this memorandum using an "Expression of Interest". Organization of data is of minimal interest to the recipient.

Administration/ Staff Office	VISN/MSN/Area	Station ID	City	State

List of Building(s) Affected and Square Feet per Building (for multiple buildings): Total Square Feet of Affected Buildings:

List of Parcel(s) of Land Affected and Acres per Parcel (for multiple parcels): Total Available Acres all Parcels:

Current annual costs to maintain property at status quo: (\$000)

Brief Property Description:

Justification for Excess:

Estimated Net Proceeds if Excessed:

(according to the Administration/staff office proposing to excess, \$000)

VA HANDBOOK 7633 APPENDIX B

SAMPLE: Expression of Interest In Real Property Proposed for Excess

Decisions about whether to transfer property between Administrations or staff offices or to excess properties are at the discretion of the Deputy Secretary. Administrations or staff offices interested in a property that has been proposed for excess must send a memorandum to the Deputy Secretary. To propose a use that would supersede the excessing of the subject property, please provide the information requested in a similar manner shown below. Organization of data is of minimal interest to the recipient.

Administration/ Staff Office	VISN/MSN/Area	Station ID	City	State

List of Building(s) Affected:

Total Square Feet of Affected Buildings:

List of Parcel(s) of Land Affected:

Total Available Acres of All Parcels:

Estimated Net Proceeds If Excessed

(according to the Administration/staff office proposing to excess, \$000)

Proposed Use

The interested Administration/staff office proposes an alternative use for the buildings and land to be excessed. Please write a one paragraph summary of the plans, benefits, and requirements to effect this alternative use.

Describe how the alternative use to disposal would meet an immediate, urgent need of veterans, and any direct and ancillary benefits.

Funds required to make an alternative use operational: (\$000)

Can funds be allocated from existing budget accounts? Yes / No

Will new funds be required to make this use operational? Yes / No

VA McKinney-Vento Act Process

- 1. Property (land or buildings) is identified as "excess," "unutilized" or "underutilized" through regularly scheduled surveys.
- 2. The Federal Property Information Checklist is submitted for each building or parcel of land in response to quarterly requests from HUD (25 days).
- 3. HUD determines suitability of property for use by homeless assistance groups (30 days).
- 4. If HUD determines property "unsuitable," information on the property is published in the Federal Register.
- 5. Homeless groups may appeal "unsuitable" determination (20 days).
- 6. If there is no appeal or appeals are denied, the McKinney Act is satisfied and the agency may dispose of the property.
- 7. If HUD determines the property "suitable," VA provides HUD with a Statement of Intent to make the property "available" or "unavailable" for homeless use (45 days).
- 8. If VA declares the property unavailable for use by homeless assistance groups, information on the property is published in the Federal Register and VA may dispose of the property.
- 9. If VA makes the property available for use by homeless assistance groups, information on the property is published in the Federal Register and a 60-day hold is placed on the property during which no action can be taken.
- The homeless assistance group submits an expression of interest in the property to HHS; a full application must be submitted within 90 days after the expression of interest.
- 11. If HHS approves application, it is forwarded to the agency for action; the agency has discretion on the length of lease (minimum one year), and other terms and conditions.

McKinney – Vento Process Terms and Definitions

Application requirements for homeless providers applying to HHS under McKinney-Vento Act — Upon receipt of an expression of interest, HHS will send an application packet to the interested entity requesting the following: (1) Description of the applicant organization, (2) Description of the property desired, (3) Description of the proposed program, (4) Ability to finance and operate the proposed program, (5) Compliance with non-discrimination requirements, (6) Proof of insurance, (7) Information relating to historic preservation, (8) Environmental information, (9) Local government notification, and (10) Zoning and local use restrictions.

Available – Property made available by landholding agency for homeless use by HUD/HHS.

Eligible organization – A State, unit of local government, or private, nonprofit organization which provides assistance to the homeless, and which is authorized by its charter or by State law to enter into an agreement with the Federal Government for use of real property. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

Excess property – Any property under the control of any Federal executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. § 483.

Expression of Interest – An 'Expression of Interest' should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, nonprofit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services. HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

Federal Property Information Checklist or FPIC [see Federal Management Regulation (FMR) part 102-75.125 thru 102-75.140] – A listing of property information and characteristics used by HUD to determine suitability for homeless use under the McKinney-Vento Act requirements.

ICH – Interagency Council on the Homeless.

Negotiated Sale (see FMR Part 102-75.880) – Executive agencies may conduct negotiated sales only when:

- (a) The estimated fair market value of the property does not exceed \$15,000;
- (b) Bid prices after advertising are unreasonable (for all or part of the property) or were not independently arrived at in open competition;(c) The character or condition of the property or unusual circumstances make it impractical to advertise for competitive bids, and the fair

market value of the property and other satisfactory terms of disposal are obtainable by negotiation;

- (d) The disposals are for states, territories, or other political or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtainable by negotiations. Negotiated sales to public bodies can only be conducted if a public benefit, which would not be realized from a competitive sale, will result from the negotiated sale; or
- (e) Negotiation is otherwise authorized by the Federal Property and Administrative Services Act of 1949 or other law, such as disposal of power transmission lines for public or cooperative power projects.

Public Benefit Conveyances (see FMR 102-75.350) – Based on a highest and best use analysis, disposal agencies may make surplus real property available to State and local governments and certain nonprofit institutions at up to 100 percent public benefit discount for public benefit purposes. Some examples of such purposes are education, health, park and recreation, the homeless, historic monuments, public airports, highways, correctional facilities, ports, and wildlife conservation.

Public Sale (see FMR 102-75.935) – Disposal agencies must make available by competitive public sale any surplus property that is not disposed of by public benefit discount conveyance or by negotiated sale. Awards must be made to the responsible bidder whose bid will be most advantageous to the Government, price and other factors considered.

Real Property Classifications – "Suitable/Available," "Suitable/Excess," "Suitable/Unavailable," and "Unsuitable."

Representative of the Homeless – A State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

Suitable – After reviewing the FPIC, a determination is made by HUD on the suitability of the property for homeless use. Certain properties are granted suitability exemptions for conditions including national security concerns, flammable or explosive materials, runway clear zone or military airfield clear zone, floodway, documented deficiencies, or inaccessibility.

Exempt categories of suitable properties include:

- (1) Machinery and equipment.
- (2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.
- (3) Properties subject to special legislation directing a particular action.

- (4) Properties subject to a court order.
- (5) Property not subject to survey requirements of Executive Order 12512 (rescinded by EO 13327).
- (6) Mineral rights interests.
- (7) Air space interests.
- (8) Indian Reservation land subject to section 202(a)(2) of the Federal Property and Administrative Service Act of 1949, as amended.
- (9) Property interests subject to reversion.
- (10) Easements.
- (11) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency.

Unavailable – If a property is declared unavailable by the landholding agency, compelling reasons that are different from suitability reasons must be furnished in a written statement to HUD. Examples of properties listed as unavailable by the Federal Register include: Needs rehab, off-site use only, poor condition, lead paint/asbestos present, needs repair.

Underutilized - An entire property or portion thereof, with or without improvements, used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property. By law, property under an enhanced-use lease is not considered underutilized.

Unsuitable – After HUD reviews the Federal Property Information Checklist for environmental, floodway, current use, and other characteristics, the property may be determined unsuitable for homeless use. No specific use or project is considered in this review, only general requirements for any property.

Unutilized - An entire property or portion thereof, with or without improvements, not occupied for current program purposes, or occupied in caretaker status only.